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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/627,155      07/27/00      TAUBER

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EXAMINER

QM12/0726

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ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/627,155

Applicant(s)

TAUBER, JOHN

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on 21 June 2001 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Drawings***

1. The corrected or substitute drawings were received on June 21, 2001. These drawings are approved by the examiner.

***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3,6,8-13,15,16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowsky (US 3,853,236).

Ostrowsky teaches the claimed closure having lugs on an outer cap and recesses on an inner cap, said recesses each formed by a vertical wall and an inclined wall. The lugs of the outer cap engage the recesses of the inner cap in a closure application direction and slide up the inclined walls in a closure opening direction when a force urging the outer cap towards the inner cap is not being applied.

4. Claims 1-6,8-13,15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Maki (US 3,622,027).

The lugs are formed by knurls 34 and the recesses are formed by knurls 24. The recesses each comprise a wall which is inclined with respect to a vertical axis extending longitudinally of the safety closure.

***Claim Rejections - 35 USC § 103***

5. Claims 4,5 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky.

Ostrowsky discloses the claimed invention except for the lugs and recesses numbering at least twelve and/or the lugs and recesses numbering twenty-four. It would have been

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obvious to one having ordinary skill in the art at the time the invention was made to provide at least twelve and more specifically twenty-four lugs and recesses, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

6. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky in view of Friedenthal (US 5,147,053).

Ostrowsky teaches the claimed closure except for the first top cap containing a beveled edge.

Friedenthal teaches a closure having a beveled edge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a beveled edge as taught by Friedenthal to the first top cap of Ostrowsky. Doing so would provide a cap edge which would allow for more comfortable actuation of the first cap toward the second cap.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky in view of Buono (US 5,197,616).

Ostrowsky teaches the claimed closure except for indicia on an outer surface of the first top wall.

Buono teaches a closure having indicia on an outer surface of the first top wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply indicia on an outer surface of the first top wall as taught by Buono to the closure of Ostrowsky. Doing so would provide operating instructions for a user of the closure.

8. Claims 7,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maki in view of Friedenthal.

Maki discloses the claimed safety closure except for a beveled edge on the outer cap and a plurality of ridges on the outer cap skirt.

Friedenthal discloses a safety closure comprising an top cap having a beveled edge and a plurality of ridges on the skirt.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a beveled edge to the top cap and a plurality of ridges on the skirt as taught by Friedenthal to the closure of Maki. Doing so would provide user comfort when pressing downwardly on the safety closure with a hand while enhancing gripping of the safety closure.

9. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maki in view of Buono (US 5,197,616).

Maki teaches the claimed closure except for indicia on an outer surface of the first top wall.

Buono teaches a closure having indicia on an outer surface of the first top wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply indicia on an outer surface of the first top wall as taught by Buono to the closure of Maki. Doing so would provide operating instructions for a user of the closure.

### ***Response to Arguments***

10. Applicant's arguments filed June 21, 2001 have been fully considered but they are not persuasive.

Regarding applicant's remarks at page 6, paragraph 3 of the response, the lugs of closure of Maki do not always engage the corresponding recesses (see col. 1, lines 53-55). Additionally, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the closure

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can be applied to a container without the use of downward force) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Thus, the closure of Maki anticipates the claims as set forth hereinabove.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Porcelli et al discloses a double cap closure which functions the same as that of the instant application, but has interengaging lugs without any recesses. Smith et al discloses a double cap closure which functions as the same as the instant application, but with a different set of interengaging lugs in the closure application direction and the closure removal direction. Gach, Wassilieff, and Kayser et al are cited for teaching safety closures of interest.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging

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FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148. The fax phone number for this Group is (703) 305-3579.

Robin A. Hylton/rah  
July 20, 2001



Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700